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UNCLAS SECTION 01 OF 02 NAIROBI 002016

SENSITIVE

DEPT FOR AF/E Driano, AND S/CT  
AF/RSA FOR BITTRICK AND BANDO  
INL FOR SILENSKY  
DOJ/OPDAT FOR ALEXANDRE, BERMAN, SILVERWOOD  
DOJ FOR CRIM, DAAG, SWARTZ

SIPDIS

E.O.12958: N/A

TAGS: [KCRM](#) [KJUS](#) [PHSA](#) [KCOR](#) [PGOV](#) [KE](#) [IT](#)

SUBJECT: KENYA THREATENS END TO PIRACY PROSECUTIONS

1. (SBU) Summary: On September 12, the Kenya Attorney General (AG), Amos Wako, presented opening remarks at the Kenya prosecutors' convention in Mombasa, and touted the Department of Public Prosecutions' (DPP) progress under his leadership. He listed a dozen specialized units that had been formed within the DPP and relevant criminal justice legislation that had been enacted or had been recently drafted. When noting a number of these accomplishments, he acknowledged the support that was provided by the U.S. government. Also, he stated that the DPP was now the "leading [piracy] prosecution agency in the world," but that Kenya's willingness to prosecute these cases is being "taken for granted." He stated that the international community needs to provide Kenya with more assistance, "otherwise, we will say 'enough is enough.'"

2. (U) The AG's remarks were later echoed by the Director of Public Prosecutions (DPP), Keriako Tobiko, in private conversations. The DPP expressed annoyance at the international community's unwillingness to prosecute Somali pirates in their own countries, and at the proposals to develop counter-piracy centers in regional states other than Kenya. He also said that proposals for an international piracy tribunal, however formulated, were "fantasies." The AG also announced a three-year plan to phase out police prosecutors. There are over 300 police prosecutors and they now prosecute over 90 percent of criminal cases. There are 73 trained lawyers in the DPP's office. The plan would require current police prosecutors to undergo training and approval by the AG to become lay prosecutors who would work under the direct supervision of the DPP. Over time, increased employment of attorneys within the DPP would lead to a reduction in the number of lay prosecutors. End summary.

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AG TOUTS PROGRESS AND CRITICIZES DONORS  
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3. (SBU) On the opening day of the Department of Public Prosecutions' (DPP) First Annual Convention, Attorney General Amos Wako spoke for three hours extolling the progress of the DPP, while criticizing the international community for constantly "talking about law reform, law reform," and for not giving enough credit and support for Kenya's piracy prosecution efforts. The AG noted that, in the last few years, the DPP had established approximately a dozen substantive units, including, anticorruption, economic crimes and asset forfeiture; narcotics and money laundering; general crimes; extradition and mutual legal assistance; constitutional and judicial review; sexual offenses and victims' rights; and counter-piracy. (Comment: Most of these units exist in name only. Senior prosecutors are assigned to multiple units, but they do not necessarily undertake substantive work in those areas. A dozen

prosecutors have been "assigned" to the counter-piracy unit, for example. Until recently, only three prosecutors have been actively involved in any of the piracy cases. End Comment)

14. (SBU) The AG also heralded his Department's involvement in the drafting and enactment of legislation relating to sexual offenses, plea bargaining, and witness protection, as well as their current role writing proposed legislation on anti-money laundering, mutual legal assistance, counterterrorism, organized crime, and the international transfer of prisoners. He listed ten training conferences that had taken place over the last year, including those relating to trial advocacy, witness protection, forensics, sexual offenses, and the induction of new prosecutors. He thanked the U.S. government for its assistance with the legislative drafting and training programs.

15. (SBU) The AG announced plans for the police prosecutors to be phased out and replaced over time with lawyers employed in the DPP. The plan calls for the AG to establish two categories of criminal offenses: minor offenses (misdemeanors) that could be charged by police, but the charges would have to be reviewed and approved by the DPP's office within 14 days; and major offenses (felonies) that could only be brought by the DPP's office. Existing police prosecutors would have to undergo additional training, be vetted and officially gazetted by the AG before they would join the ranks of "lay prosecutors" overseen by the DPP. Meanwhile, more lawyers would be hired by the DPP.

16. (SBU) In his public remarks, the Director of Public Prosecutions, Keriako Tobiko, also thanked the US Department of Justice and the U.N. Office on Drugs and Crime (UNODC) for their continued support. He asked the USDOJ Resident Legal Advisor (RLA)

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to help his office develop several training programs, including country-wide seminars for prosecutors and judges on plea agreements, and a program to address sentencing reform. (Note: The RLA's office provided support for the DPP's three-day conference, and the RLA and the USDOJ/International Criminal Investigative Training Assistance Programme (ICITAP) Senior Law Enforcement Advisor were present to teach portions of the program. There were approximately 100 participants, including representatives from the police prosecutors, the Kenya Anti-Corruption Commission (KACC), and the Kenya Revenue Authority (KRA). The KRA was recently granted prosecutorial powers by the AG. The AG has never extended these same powers to the KACC. End Note)

17. (SBU) In private, the DPP expressed his office's irritation with the pace and amount of support provided by UNODC for piracy prosecutions. He noted that those European countries who had delivered pirate suspects to Kenya were unwilling to prosecute pirates in their home countries. He raised the case of the Italian capture where the suspected pirates were held by the Italian Navy on board ship for several weeks, and were arraigned via teleconference before an Italian judge, only later to be flown to Kenya after Italy passed legislation to discharge itself of the responsibility to prosecute this group of suspects. He was also dismayed about plans by the international community to pay for "counter-piracy centers" in neighboring states that have done much less than Kenya in the fight against piracy. (Note: The president of the International Maritime Organization (IMO) is Japanese, and the Japanese reportedly have agreed to contribute several million dollars toward the IMO establishing such a center in Djibouti, and possibly Yemen. End Note)

18. (SBU) DPP Tobiko stated that an international criminal tribunal for piracy was not workable or realistic. He said that such a tribunal, wherever based or however constituted, was a "fantasy." He referred to the checkered history of the other international criminal tribunals. He concurred with the view that donor money was better spent building the capacity of existing criminal justice systems. He also stated that Tanzania was unlikely to pass legislation to permit piracy prosecutions to proceed there, because Tanzania did not see that Kenya was receiving any significant benefit for its involvement. (Note: Although the DPP was dismissive of the work done by UNODC over the last few months for the judiciary

and prisons on the Kenyan coast, representatives from those organizations are more complimentary of UNODC's assistance. End Note)

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Comment  
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¶9. (SBU) Although both the AG and the DPP publicly expressed appreciation for U.S. support, there was a new stiffness in their private posture toward the RLA and Embassy representatives. In part, their new posture can be attributed to their disenchantment with the international community's general response to piracy and to their perception that they are not getting a sufficient and liquid share of the millions of dollars being spent by the international community on counter-piracy efforts. However, their new attitude likely is influenced more by our recent calls for the AG to be removed from office.

¶10. (SBU) The international community's desire for Kenya to continue to assume the primary role in piracy prosecutions comes at an awkward time. Now, twenty months after the post-election violence, the Kenya government's continued inertia, particularly its lack of significant progress in improving the rule of law, has underscored the need for certain GOK officials to be replaced. It is equally apparent that their removal is unlikely to occur without the application of international pressure. The long-term interests of the Kenyan people likely would be served if the AG, who has held that that position for more than 18 years, were replaced. Piracy prosecution in the region might suffer in the short-term, however, if the AG uses his discretion and refuses to accept more piracy cases in order to punish the international community for its calls for his removal. End Comment

RANNEBERGER